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STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL
JUNEAU, ALASKA 99811

January 21, 1982

Pat Lawler
Administrative Assistant
House Natural Resources Committee
Alaska House of Representatives
Pouch V
Juneau AK 99811

Re: HB 231

Dear Mr. Lawler:

This will confirm our conversation earlier today regarding HB 231, "An Act relating to the the seizure of items used or in aid of fish and game violations."

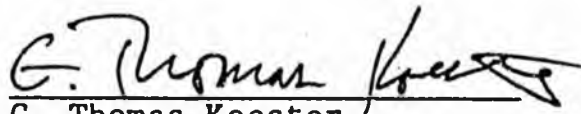
The Department of Law supports the position expressed by the Department of Public Safety on this bill. In particular, Public Safety's comments regarding the impact of this proposal on the criminal justice system cannot be overstated. Because of the time delays inherent in pursuing fish and game violations in remote areas, and the additional time delays inherent in the criminal justice system, virtually every instance in which an item is seized would require an appearance in court to seek a judicial extension of the seven day period the bill would permit law enforcement officers to hold the item. This, in turn, would divert both field officers and district attorney resources from more substantive pursuits (i.e., the apprehension and prosecution of other criminal violations). In addition, it would further crowd already crowded court calendars.

Summarizing, it is the Department of Law's position that HB 231 would have a severe detrimental impact on the enforcement of the state's fish and game laws. Please communicate our views to the Natural Resources Committee at your convenience. Thank you.

Sincerely,

WILSON L. CONDON

by:



G. Thomas Koester
Assistant Attorney General



STATE OF ALASKA
OFFICE OF THE GOVERNOR

BILL ANALYSIS

Department Public Safety	Sponsor (Principal) Randolph, Abcod, Barnes Beirne, Bettisworth, Bvlsma, Fanning, Metcalf, and Montgomery	Bill Number HB 231
Department Position Oppose		
Division Director Colonel Robert J. Stickles	Date 03/10/81	Commissioner <i>William R. Nix</i> Commissioner William R. Nix
		Date 03/10/81

GOVERNOR'S OFFICE USE

Comments:

Position Noted

By

Date

SUMMARY

1. a) Related Bills (Similar or Conflicting) None	1. b) Other Agencies Affected by Bill Court System, District Attorney's Office
2. a) Organizational Support for Bill Unknown	2. b) Organizational Opposition to Bill Unknown

3. Program Effects of Bill

The position taken on this bill reflects the conclusion that there would be a severe detrimental effect on enforcement of all fish and game laws statewide.

4. Fiscal Impact: None Fiscal Note Attached

5. Amendments Proposed:

6. Comments:

- The wording of the first added section on page 1, lines 14, 15, 16 would seem to prohibit the seizure or retention of items used in the commission of a violation, as with a weapon used to take game out of season. The weapon would not be specific evidence of a violation but an instrument used in the commission of it, pointing to the complicity of an individual in the violation. Many times, however, such an instrument of a violation is essential in prosecuting any accused party.
- The wording of the second added section, page 1, line 29, and page 2, line 1, within seven days after the seizure unless an extension is approved by court order for cause shown may lead to several problems.
 - Due to distance from the nearest court and intervening weather much evidence

- could not reach a court within seven days nor could the officer(s) involved get to court to present the reasons for a court order.
- b. In the case of an aircraft or vessel seizure a complete inventory is necessary to protect the owner of the equipment and the state, and is no doubt necessary for a court order for retention, but at times an inventory could not be completed in seven days.
 - c. If an item must be returned to the owner because, through communications problems or remoteness of the site no court order has been issued in time, the evidence value of the item is, in many cases, destroyed. This can result in prosecutable violations being dismissed for lack of evidence.
 - d. Requiring the return of the evidence within a seven day period places a burden on the state possibly very difficult to meet. If a Department of Public Safety aircraft or vessel is still enroute to the location of evidence storage or a court, and a court order has not been obtained for whatever reason (difficulty in reaching a magistrate or the necessity of showing the evidence to a court official), apparently despite weather or other considerations the Department aircraft or vessel must return to locate the owner who by now may be enroute elsewhere himself. The bill, as written, makes no provision for difficulty in locating the owner or for delay due to the person attempting to return the evidence becoming engaged in investigating other violations or engaged in work of an emergency nature such as a search and rescue mission.
 - e. Failure to return the evidence in the time allotted would apparently open the state to court suit.
 - f. Return of the evidence within a fixed time may sometimes involve great expense to the state such as when crab pots must be taken many miles by a large vessel in the Bering Sea and may cause serious disruption of a planned patrol effort.
 - g. The issuance of approximately 1,000 court orders per year, at a rate of about 5 per working day, will be a considerable burden on the court system requiring much more time devoted to fish and game violations than at present. This could possibly either disrupt the administration of justice in other areas, or frustrate the proper enforcement of fish and game laws.
 - h. Return of evidence, especially in the case of large items, could frustrate any later attempts by the state to have the item forfeited after the case was completed (a position suggested in the recent Alaska Supreme Court decision in the American Eagle case).
3. The seizure of evidence or instrumentalities of a violation, and whether it can be used in any case against any defendant is presently regulated quite
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rigidly by the United States Constitution, sections of Title 16 of the Alaska Statutes, and rules of court concerning both criminal and civil procedure. In addition, there are Department of Public Safety policies on seizure of evidence.

All of the above restrictions presently act in concert to prevent abuse of citizens' rights.



STATE OF ALASKA
OFFICE OF THE GOVERNOR

BILL ANALYSIS

Department Fish and Game	Sponsor (Principal) Resources	Bill Number CSHB 231
Department Position OPPOSE		
Division Director <i>Ronald J. Somerville</i> Ronald J. Somerville	Date 2/9/82	Commissioner's Signature <i>[Signature]</i> Date 2-10-82

GOVERNOR'S OFFICE USE

Comments:

<input type="checkbox"/> Position Noted	By	Date
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SUMMARY

1. a) Related Bills (Similar or Conflicting) Unkown	1. b) Other Agencies Affected by Bill . DPS - Division of Fish and Wildlife Protection
2. a) Organizational Support for Bill Unknown	2. b) Organizational Opposition to Bill Unknown

3. Program Effects of Bill

None, except to the extent that this change might make enforcement to Fish and Game regulations less effective. It is emphasized that adequate enforcement is an integral part of a resource management program.

4. Fiscal Impact: None Fiscal Note Attached

5. Amendments Proposed:
None

6. Comments:

While law enforcement of Fish and Game regulations is the primary responsibility of DPS, Fish and Game Personnel also enforce Title 16 and Fish and Game regulations. It is our opinion that passage of this legislation would be detrimental to efficient enforcement of these statutes and regulations. Seizure of equipment used in commission of a crime serves 2 purposes: 1) to strengthen a case and substantiate how the crime was committed and 2) such seizures (or the knowledge on the part of a potential violator that equipment used is subject to seizure) acts as a very real deterrent, many cases, to the commission of a crime.